

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEROY WILLIAMS BEY,

Plaintiff,

V.

CHILD PROTECTIVE SERVICES, et. al.

CASE NO. C13-812-MJP

**ORDER DENYING MOTION FOR
SERVICE OF SUMMONS AND
COMPLAINT**

Defendants.

This matter comes before the Court on Plaintiff's motion for the United States Marshal's

Service (“USMS”) to serve the summons and complaint to the more than 30 defendants named in

this civil case. (Dkt. No. 6.) Having reviewed the motion and the related record the Court

DENIES the motion. Further, the Court ORDERS Plaintiff to show within ten days of this order

why his *in forma pauperis* status should not be revoked and the case dismissed because he fails

to state a claim and asserts claims for money damages against defendants immune from such

relief. The Court DENIES Plaintiff's motion for return of service and to find defendants as

moot. (Dkt. No. 10.)

1 Plaintiff, proceeding pro se and in forma pauperis, has filed a civil rights complaint
2 pursuant to 42 U.S.C. § 1983. (Dkt. No. 5 at 8.) Plaintiff's claims mainly involve his children,
3 who he believes were kidnapped by the State of Washington. He asserts that defendants,
4 including federal and state judges, conspired to deprive him of custody of his children. (Id. at 4.)
5 In other instances, his claims involve the validity of his criminal conviction, lawfulness of his
6 placement at Western State Hospital, and prescription of medications at that hospital. (Id. at 4-
7 5.) Plaintiff was granted in forma pauperis status in May 2013. He now seeks service of his
8 summons and complaint against the 46 named defendants.

9 In forma pauperis is available only where Plaintiff asserts a valid claim. 28 U.S.C.
10 §1915. A Court must dismiss the case if at any point it determines the claim is "frivolous or
11 malicious...fails to state a claim on which relief may be granted...seeks monetary relief against a
12 defendant who is immune from such relief." 8 U.S.C. §1915(e)(2).

13 Applying the screening requirements for in forma pauperis status to Plaintiff's complaint,
14 the Court finds it deficient. First, in order to sustain a civil rights action, a plaintiff must show
15 (1) that he suffered a violation of rights protected by the Constitution or created by federal
16 statute, and (2) that the violation was proximately caused by a person acting under color of state
17 or federal law. Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991). Section 1983 is the
18 appropriate avenue to remedy an alleged wrong only if both of these elements are present.
19 Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985). To satisfy the second prong, a
20 plaintiff must allege facts showing how individually named defendants caused or personally
21 participated in causing the harm alleged in the complaint. See Arnold v. IBM, 637 F.2d 1350,
22 1355 (9th Cir. 1981).

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1 The Court declines to order that plaintiff's complaint be served because his complaint is
2 deficient in at least the following four ways:

3 (1) Plaintiff fails to allege sufficient facts for state a claim against all Defendants.

4 Rather than show facts to support his claims, the Complaint consists of legal
5 conclusions regarding defendants kidnapping of his children or other defendants'
6 aiding and abetting of these alleged acts. To state a claim, Plaintiff must set forth
7 factual allegations sufficient "to raise a right to relief above the speculative level."
8 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). A pleading that offers
9 "labels and conclusions" or "a formulaic recitation of the elements of a cause of
10 action will not do." Id. Plaintiff

11 (2) Plaintiff alleged no facts to lower the shield of absolute judicial immunity against
12 the eight judges he names as Defendants. Stump v. Sparkman, 435 U.S. 349, 356
13 (1978).

14 (3) In other instances, Plaintiff presented no facts from which the Court could infer the
15 Defendants were acting under color of state law. For example, he names four
16 criminal defense attorneys. But, a defense attorney, even if they are assigned
17 counsel, does not act under color of state law and cannot be liable for a §1983
18 claim. Polk County v. Dodson, 454 U.S. 312, 317–18 (1981).

19 (4) Plaintiff also names Western State Hospital in the proposed complaint, but he
20 provides no facts regarding his alleged stay in the hospital. State agencies, such as
21 Western State Hospital, are not persons for purposes of the Civil Rights Act. Will
22 v. Michigan Department of Police, 491 U.S. 58, 66 (1989). Section 1983 claims
23 against a state or its agencies are, therefore, legally frivolous. See, e.g., Jackson v.
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Arizona, 885 F.2d 639, 640–41 (9th Cir. 1989), superseded by statute on other grounds as stated in, Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc).

Because the Complaint is not viable, the Court DENIES the motion to order service by the Marshal's Service. The Court also DENIES Plaintiff's motion for return of service and to find other defendants as moot.

7 Plaintiff may file an amended complaint within thirty (30) days of the date on which this
8 Order is signed. The amended petition must be filed under the same case number as this one,
9 and will operate as a complete substitute for, rather than a mere supplement to, the present
10 petition. Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). If no amended complaint is
11 timely filed, the Court will revoke Plaintiff's in forma pauperis status and dismiss the claim for
12 failure to adequately allege a cause of action.

The clerk is ordered to provide copies of this order to all counsel.

Dated this 29th day of July, 2013.



Marsha J. Pechman
Chief United States District Judge